

Kasey A. Castillo, Esq. [SBN 236690]
KC LAW GROUP
31566 Railroad Canyon Road
Suite 2, PMB 1123
Canyon Lake, California 92587
Telephone: (951) 364-3070
Email: kasey@kc-lawgroup.com

Michael D. Schwartz, Esq. [SBN 166556]
THE MICHAEL SCHWARTZ FIRM
3580 Wilshire Boulevard, Suite 1260
Los Angeles, California 90010
Telephone: (323)793-6735
Email: mds@themichaelschwartzfirm.com

Attorneys for Defendant,
DEVON CHRISTOPHER WENGER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
DEVON CHRISTOPHER WENGE
Defendant.

TO: THIS HONORABLE COURT AND ALL COUNSEL OF RECORD

I. NOTICE AND INTRODUCTION

The government may seek to preclude any reference to the prior acquittal of Co-Defendant Amiri on the charged conspiracy. While Defendant Wenger agrees that the acquittal may not be introduced as substantive evidence of innocence, Wenger opposes a blanket exclusion to the extent it would preclude impeachment of a third cooperating witness, Mr. Rombough, who claims the existence of the very conspiracy a jury has previously rejected.

1 As argued below, this Court should not categorically exclude Amiri's acquittal, but instead reserve
 2 judgment until trial when the Court can assess whether the evidence may become relevant for
 3 impeachment purposes, such as rebutting inconsistent or speculative testimony by the cooperating
 4 witness.

5 **II. ARGUMENT**

6 **A. Judicial Notice May Be Taken of the Fact of Acquittal**

7 Under FRE 201(b), the Court may take judicial notice of a prior acquittal as a matter of public
 8 record not subject to dispute. While Wenger does not intend to introduce the legal effect of the acquittal,
 9 the fact that a jury, after trial, rejected the government's conspiracy theory as to Co-Defendant Amiri may
 10 have impeachment value if the cooperating witness, Mr. Rombough, testifies inconsistently with the
 11 factual circumstances underlying that verdict, or the resultant verdict itself.

12 **B. Impeachment of a Cooperating Witness Permits Exploration of Contradictory**
 13 **Accounts**

14 Mr. Rombough is expected to testify that Defendant entered into a conspiracy with both he and the
 15 previously acquitted co-defendant, Mr. Amiri. If the government permits this testimony, it necessarily
 16 opens the door to rebuttal evidence demonstrating that the conspiracy theory involving that co-defendant
 17 has already been rejected by a jury after full presentation of evidence.

18 This is not offered for the truth of the matter asserted (i.e., that no conspiracy existed), but to show
 19 that the witness's current testimony is inconsistent with prior adjudicated facts, thus casting doubt on the
 20 reliability and credibility of the witness. See *United States v. Abel*, 469 U.S. 45, 51 (1984) (bias and
 21 credibility are always proper subjects for impeachment).

22 **C. Rule 403 Balancing Should Be Conducted at Trial**

23 The government's argument under Rule 403 is premature. There is no basis for a blanket preclusion
 24 at this stage. The Court can always issue a limiting instruction and evaluate admissibility during the
 25 testimony, particularly if the cooperating witness overreaches or attempts to characterize the conspiracy
 26 in ways that contradict the known outcome of the prior case.

27 ///

28 ///

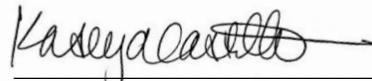
///

1 **III. CONCLUSION**

2 Defendant Wenger does not intend to introduce the prior acquittal as substantive evidence.
 3 However, this Court should not exclude it categorically but instead allow the defense to raise the issue
 4 for impeachment, if the cooperating witness offers testimony inconsistent with the established verdict or
 5 makes generalized claims about the conspiracy involving all parties. The Court should evaluate
 6 admissibility on during trial with the aid of limiting instructions as needed.

7 Respectfully submitted,

8 **KC LAW GROUP**

9 

10 Dated: May 29, 2025

11 Kasey A. Castillo, Esq.
 12 State Bar Number: 236690
 13 31566 Railroad Canyon Road
 14 Suite 2, PMB 1123
 15 Canyon Lake, California 92587
 16 Telephone: (951) 364-3070
 17 Email: kasey@kc-lawgroup.com

18 Michael D. Schwartz, Esq.
 19 State Bar Number: 166556
 20 THE MICHAEL SCHWARTZ FIRM
 21 3580 Wilshire Boulevard, Suite 1260
 22 Los Angeles, California 90010
 23 Telephone: (323)793-6735
 24 Email: mds@themichaelschwartzfirm.com

25 Attorneys for Defendant,
 26 DEVON CHRISTOPHER WENGER